

THE TIME IS NOW FOR LAW STUDENT LOAN ASSISTANCE

All indications are that 2007 is the year for Kentucky's passage of law student loan assistance.

This is a program that encourages and supports those lawyers who want to use their legal training for the direct benefit of the public, (as prosecutors, public defenders, and civil legal services practitioners), rather than entering private practice.

Over the last several years, law student loan assistance legislation has passed both chambers of the Kentucky General Assembly at one time or another. It has enjoyed strong bipartisan support from legislators all across the state. Despite such support, the bills have met with various problems in the past. But, the final hurdle that surfaced in the 2006 General Assembly has now been leveled.

As Jefferson Commonwealth's Attorney Dave Stengel said a few years ago: "It is normal that legislation of any significance such as student loan forgiveness requires several attempts before passage I believe that a student loan forgiveness schedule is essential for us to attract and keep top qualified young prosecutors, just as I am sure that DPA needs such legislation to keep effective young defenders."

Those familiar with this legislation see it as being primed for enactment into law this time around.

Why is the legislation needed?

(1.) The world faced by new law school graduates today is vastly different from the one faced by those of us who graduated some time ago. Borrowing money has become an absolute necessity, as tuition and expenses have skyrocketed.

(a) Many new law school graduates, who have a great desire to be prosecutors or public defenders, are forced to enter the private sector instead, because of the need to pay off tens of thousands of dollars in student loans. They know they could never do it on a state government salary. The public loses all the talent and enthusiasm that these lawyers would bring to public service.

DPA Recruiter Londa Adkins speaks with many prospective public defenders. They tell her that a loan assistance program would make indigent defense a much more viable career choice. Indeed, there is real-life data to prove that point. Two counties in Arizona recently began a loan assistance program for public defenders. They report that, where a vacant position previously would have attracted a handful of applicants, they are now attracting scores or even hundreds of applicants. The quality and diversity of the applicant pool have gone up exponentially.

(b) Other graduates do choose public service careers but discover, too late, that their salaries are insufficient to make ends meet. The public sector then loses those lawyers. The public then also loses all the resources that were invested in those lawyers' recruitment, training, and professional development.

There are Department of Public Advocacy employees carrying law school loan debts of up to \$130,000. These staff members are unable to participate in the state employee deferred compensation plans. They are delaying the start of families. They have to borrow money from their parents in order to make student loan payments that exceed their mortgage payments.

For many, it is just a matter of time before they are forced to leave state government, in order to avoid bankruptcy.

(2.) The citizens of Kentucky deserve a justice system in which the public is served by capable professionals who are dedicated to public service, not merely biding their time until they leave for greener pastures. The citizens of Kentucky deserve better than a revolving door system, where new lawyers enter public service, get training and experience at public expense, and then leave to put their training and experience to use in the private sector. But, that is the type of system we have, given the lethal combination of staggering student debt and low salaries.

In the recent past, DPA has been losing an average of 3-4 lawyers per month. That high rate of turnover is expensive:

Every time DPA brings on a new lawyer, the agency has already spent over \$1,500 in recruitment and hiring costs.

Then, the new lawyer must be educated and trained in the specifics of indigent criminal defense, which costs about \$5,600 per lawyer.

But, the revolving door costs us more than just dollars and cents. Criminal justice is a matter of public safety and public fairness. Our criminal laws become more complex and numerous every year, so the system needs to recruit the best and needs to retain experienced lawyers. If the public is to be served by a fair and reliable criminal justice system, the system must do better than rely upon a succession of novice lawyers who come and go.

Bob Ewald, KBA president and chair of the Public Advocacy Commission, has noted the burden placed on other lawyers in an office when one of their co-workers resigns. "The remaining lawyers have to take responsibility for their former colleague's cases, over and above their own already huge caseloads. It's hard to put a dollar figure on the problem, but it clearly puts a strain on everybody in the system."

Jay Barrett, Director of DPA's Trial Services Division has also pointed out: "An additional factor would be the time we spend interviewing candidates to fill vacancies. An interview with the local directing attorney and staff can last anywhere from an hour to over half a day, where applicants are taken to see court and the jail. Then, our regional manager and I conduct the next two rounds of interviews. When you multiply this by as many as 9 or 10 applicants who are interviewed for a single position, you can see the huge investment of time we put into finding people who we believe will be good public defenders and who will stay with us. It really hurts when they leave us after learning that they can't pay their loans on the salary they earn with us."

Law school loan assistance will slow down the revolving door and the reduce some of the problems that the revolving door causes.

(3.) The 2007 law school loan assistance bill also addresses a sad inequity in our commonwealth's assistance to higher education students. The Kentucky Higher Education Assistance Authority offers much-needed help for students, but KHEAA's guidelines exclude a considerable number of individuals, through no fault of their own. For example, KHEAA's "Best in Law" program is not available to students whose loans are with other lenders, such as those who went to school outside Kentucky and those who previously made the fiscally-responsible decision to consolidate their student loans with some other lender. In addition, there are attorneys who were students at the UK College of Law when UK students were not allowed to get KHEAA loans.

The University of Kentucky College of Law offers grants through its Rural Drug Prosecution Assistance Project. But that funding is limited to just a few participants (varying from three to six at DPA), and is scheduled to end completely in the not-too-distant future.

So, the 2007 law school loan assistance bill is designed to fill a gaping hole in the state's plan for student loan assistance.

Who supports the legislation?

Among the supporters of law student loan assistance are the following:

American Bar Association
Kentucky Bar Association
Prosecutors Advisory Council
Commonwealth's Attorneys Association
County Attorneys Association
UK, UofL, and Chase Law Schools
Public Advocacy Commission

Access to Justice, Civil Legal Services

How does the Kentucky program work?

The law student loan assistance program offers annual reimbursement of loan payments that the participating lawyer has made during the past year.

For a full-time lawyer, the amount is capped at \$500 per month, with an annual limit of \$6,000.

For a part-time lawyer, the amount is capped at \$250 per month, with an annual limit of \$3,000.

These amounts compare with \$10,000 available annually to those who are lucky enough to qualify for KHEAA's "Best in Law" program or UK's Rural Drug Prosecution Assistance Project.

The program is not available to any individual who already participates in another program for payment of law school loan expenses. No double-dipping.

In order to qualify for the new program, the lawyer must sign a one-year commitment to remain in his or her current employment. At the end of that two-year period, the lawyer is allowed to apply for assistance during a new two-year period.

Should the lawyer voluntarily leave public service without fulfilling this two-year commitment, the lawyer would have to repay all money he or she received, with interest.

The program is administered by the Kentucky Higher Education Assistance Authority, which is authorized to promulgate regulations for the program.

The program is funded by 2% of the Court Cost Distribution Fund, with an annual maximum total amount of \$1.2 million.

How is the current situation different from the past?

In the 2006 General Assembly, law student loan assistance enjoyed its usual broad support. However, balancing the budget was difficult and even a mere \$1.2 million was scrutinized very carefully. The bill did not leave the House Appropriations and Revenue Committee.

Things will be different in the next session. The financial horizon is brighter now than it was during the 2006 session. Allocating part of the Court Cost Distribution Fund for improvement of the justice system will be easier this time around.

Why will this program work?

1. It is fiscally responsible. The amounts available to students are modest, yet substantial enough to be meaningful to the recipients. And, the public gets greater direct benefit from the tax dollars that support our state's law schools.
2. It saves the state money. No longer will we watch so many recruitment and training dollars walk out the door with each departing attorney who must leave in order to earn a higher salary elsewhere.
3. Recipients of assistance are held accountable.
4. Money for the program comes out of a fund generated by the justice system itself; the justice system pays for improving itself.

The law school student loan assistance program is a win-win proposition for all concerned. And, 2007 is proving to be the year for its passage.